



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2003

Ms. J. Middlebrooks  
Assistant City Attorney  
Dallas Police Department  
1400 South Lamar Street #300A  
Dallas, Texas 75201-1801

OR2003-7791

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190132.

The Dallas Police Department (the "department") received a request for "[a]ll internal affairs, public integrity, training, academy, recruiting and personnel records" concerning a named police officer. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that some of the information at issue may be subject to a previous ruling from this office. In Open Records Letter No. 2003-7574 (2003), we considered a request that the department received for personnel files of seven named officers, including the officer whose information is at issue in this ruling. Because the facts and circumstances surrounding that ruling do not appear to have changed, to the extent that the present request seeks information on which we have previously ruled, you must comply with our prior ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria of previous determination regarding specific information previously ruled on).

We first address your contention that some of the requested information constitutes medical records, access to which is governed by the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part:

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<sup>1</sup>We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We agree that some of the documents at issue, which we have marked, constitute medical records, which may only be released in accordance with the MPA.

You also assert that some of the requested information is made confidential by Chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002. Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the information that constitutes mental health records, which may only be released in accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code.

We also note that the submitted information includes emergency medical service ("EMS") records. Section 773.091 of the Health and Safety Code provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services

personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety § 773.091. This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g).

The submitted information includes EMS records that constitute records of the identity, evaluation, or treatment of a patient by emergency medical services personnel and are made confidential under section 773.091. None of the exceptions to confidentiality listed in section 773.092 appears to apply in this instance. Accordingly, EMS records must be withheld under section 552.101 of the Government Code. However, information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of the patients receiving emergency medical services is not confidential under section 773.091 and may not be withheld on that basis.

We turn now to your other arguments. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI “means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions” but does not include “driving record information maintained by [the Department of Public Safety (“DPS”)] under Subchapter C, Chapter 521, Transportation Code.” Gov’t Code § 411.082(2).

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from DPS or from another criminal justice agency. *Id.* §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, you must withhold any CHRI that you have in your possession that falls within the ambit of these state and federal regulations.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential the law enforcement records of a juvenile who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code

§§ 58.007, 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007(c) provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). We have reviewed the submitted information and agree that incident report number 0377883 involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. *See id.* §§ 51.02(2) (providing that in title 3 of Family Code, “child” means person who is ten years of age or older and under seventeen years of age), .03(a)(1) (defining delinquent conduct to include “conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail”). Thus, this report is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, this report is confidential in its entirety in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code. However, the other information that you contend is subject to section 58.007 does not indicate the age of the individual involved or allege that the individual violated a penal statute or otherwise engaged in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03. Thus, this information is not confidential under section 58.007 and may not be withheld on that basis.

Section 552.101 also incorporates section 261.201(a) of the Family Code, which provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Having reviewed the remaining submitted information, we agree that a portion of it constitutes “files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.” You do not inform us that the investigating agency has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that the information we have marked is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this information pursuant to section 552.101 as information made confidential by law.

As you point out, the requested documents also include information obtained in the course of conducting a polygraph examination, the release of which is prohibited by law. Section 1703.306 of the Occupations Code provides that “a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination” except to certain categories of people. Because the requestor does not fall within any of the enumerated categories, pursuant to section 552.101 and section 1703.306, you must withhold the polygraph information that we have marked.

The information at issue also includes a “Texas Peace Officer’s Accident Report.” Section 552.101 also incorporates section 550.065(b) of the Transportation Code, which states that it “applies only to information that is held by the [Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under [chapter 552] or Section 601.004 [of the Transportation Code.]” This section states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with two of the three pieces of information. Thus, pursuant to section 552.101, you must withhold the “Texas Peace Officer’s Accident Report” as information that is confidential by law.

Section 552.101 also encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Having reviewed the submitted information, we agree that a small portion of it is protected by common law privacy and must be withheld under section 552.101 on that basis. As for the remaining information, we find that, even if it could be considered highly intimate or embarrassing, it is of legitimate public concern. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and circumstances of his resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). We have marked the types of information that must be withheld under section 552.101 on the basis of common law privacy.

You also contend that police officers' cellular telephone and pager numbers and the identities of undercover officers are excepted from disclosure under section 552.108. This section provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime.

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution.

....

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) or (b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin, 2002, no pet.). This office has determined that the statutory predecessor to section 552.108(b) excepts from disclosure "the cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." Open Records Decision No. 506 at 2 (1988). In that decision, we noted that the purpose of the cellular telephones is to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* at 2. We therefore agree that the department may withhold the officers' cellular telephone and pager numbers pursuant to section 552.108(b)(1) of the Government Code.

As for the under cover officers' identities, you state that the department has "invested time and resources in the training of these [officers] in undercover work" and argue that "release of [their identities] would interfere with the ability of these officers to perform in an undercover capacity in future criminal investigations." Based on these representations, we conclude that the identities of the undercover officers may also be withheld pursuant to section 552.108(b)(1). *See* Open Records Decision Nos. 456 at 2 (1987) (statutory predecessor to section 552.108 protected information that, if revealed, might endanger life or physical safety of law enforcement personnel), 211 at 4 (1978) (statutory predecessor protected identities of members of Attorney General's Organized Crime Task Force engaged in undercover narcotics work).

In addition, you assert that some of the requested information must be withheld pursuant to section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requests

confidentiality under section 552.024.<sup>2</sup> We understand you to indicate that the individuals at issue were licensed peace officers when the department received this request. Therefore, we agree that, under section 552.117(a)(2), the department must withhold the listed information concerning these individuals. We have marked the type information that the department must withhold.

As you note, the requested information also includes a photograph of an officer. Section 552.119 excepts from public disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. Gov't Code § 552.119(a)(1)-(3). This section also provides that a photograph made exempt from disclosure by this section may be made public only if the peace officer gives written consent to the disclosure. *Id.* § 552.119(b); *see also* Open Records Decision No. 502 (1988). The photograph at issue depicts a peace officer, and it does not appear that any of the exceptions are applicable. You have not informed us that the peace officer has executed a written consent to disclosure. Accordingly, the department must withhold this photograph.

Finally, you contend that a portion of the submitted information is excepted under section 552.130. This section excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Pursuant to section 552.130, the department must withhold the type of information we have marked.

In summary, to the extent that the present request seeks information on which we have previously ruled, you must comply with our prior ruling. Medical records may only be released in accordance with the MPA, and mental health records may only be released in accordance with chapter 611 of the Health and Safety Code. Other than information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of the patients receiving emergency medical services, EMS records are confidential under section 773.091 of the Health and Safety Code. Pursuant to section 552.101, the department must withhold the following types of information, which are made confidential by the indicated statutes: (1) law enforcement records of a child who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision (section 58.007 of the Family Code), (2) files, reports, records, communications, and working papers that were used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation (section 261.201 of the Family Code), (3) any CHRI that the department has in its possession that falls within the ambit of the applicable federal and state regulations (section 20.21 of title 28 of the Code of Federal

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<sup>2</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.



Regulations and sections 411.084 and 411.087 of the Government Code), (4) information acquired from a polygraph examination (section 1703.306 of the Occupations Code), and (5) a "Texas Peace Officer's Accident Report" (section 550.065 of the Transportation Code). We have also marked the types of information that must be withheld under section 552.101 in conjunction with common law privacy. The department may withhold police officers' cellular telephone and pager numbers and the identities of undercover officers pursuant to section 552.108(b)(1). Peace officers' present and former home addresses and telephone numbers, social security numbers, and family member information must be withheld in accordance with section 552.117(a)(2). Under section 552.119, the department must also withhold photographs depicting the peace officers unless the officers have consented to their release. We have marked the types of motor vehicle record information that the department must withhold pursuant to section 552.130. The remaining requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

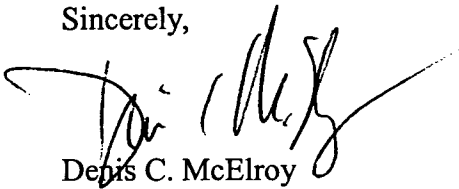
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



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DCM/lmt

Ref: ID# 190132

Enc. Submitted documents

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